

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

**MICHAEL FORMICA,
Petitioner,**

v.

**SUPERINTENDENT OF THE
CENTRAL VIRGINIA REGIONAL
JAIL,
Respondent.**

Civil Action No. 7:14-cv-00357

ORDER

**By: Hon. Michael F. Urbanski
United States District Judge**

Michael Formica, a Virginia inmate proceeding pro se, filed an amended petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, to challenge criminal judgments entered by the Circuit Court of Green County. Presently before the court are, inter alia, Petitioner's motions to voluntarily dismiss this action without prejudice after Respondent filed an answer. See Fed. R. Civ. P. 41(a)(2) (permitting voluntary dismissal only by leave of court if an answer has been filed); see also Briscoe v. Klaus, 538 F.3d 252, 258-59 (3d Cir. 2008) (recognizing a pro se litigant is "solely responsible for the progress of his case"). In his motions to voluntarily dismiss, Formica alleges that allowing this action to continue "will amount to a manifest . . . injustice" and that he would prefer "a meaningful opportunity to continue [this action] at another time." Despite these motions, Formica has nonetheless continued to litigate his petition.

On March 26, 2015, the court ordered Formica to clarify whether he wished to voluntarily dismiss his petition without prejudice or continue to prosecute his petition. At about the same time the court issued the order, Formica was transferred to two prisons, and the court cannot ascertain whether Formica ever received the order to respond.

Accordingly, Formica shall **FILE**, within fourteen (14) days of this Order's entry, a brief statement stating, without conditions or reasons, whether he wishes to voluntarily dismiss his petition without prejudice or continue to prosecute his petition. See Briscoe, supra. Formica is

advised that the one-year limitations period set forth in 28 U.S.C. § 2244(d)(1) applies to petitions for writs of habeas corpus filed pursuant to 28 U.S.C. § 2254 and may bar a future petition that does not qualify either for statutory tolling pursuant to 28 U.S.C. § 2244(d)(2) or equitable tolling pursuant to Holland v. Florida, 560 U.S. 631 (2010). Formica is further advised that a failure to comply with this order shall result in the court granting his motions to voluntarily dismiss as the court will assume that Formica has lost interest in prosecuting his petition.

It is so **ORDERED**.

The Clerk shall send a copy of this Order to the parties.

Entered: April 23, 2015

/s/ Michael F. Urbanski

Michael F. Urbanski
United States District Judge